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SUBJECT: NIGERIA: NEW ELECTORAL LAW SPARKS CONTROVERSY

Classified by Ambassador Howard F. Jeter. Reasons 1.5 (b) and (d).

1. (C) Summary: President Obasanjo signed the controversial electoral law on December 6. By shifting local government elections from 2002 to 2003, the measure has pitted the National Assembly against the state governors in a struggle to gain influence over local governments and electoral politics in general. By signing the legislation, President Obasanjo allied with the Assembly against the governors who publicly have dared to challenge the President on resource allocation and revenue-sharing issues. At Obasanjo's insistence, the law was amended to restrict the participation of new political parties in the 2003 electoral season solely to local government contests. The bill also expanded INEC's powers regarding the qualification of new parties and candidates. While given the breath of life in the President's office, the new law seems destined to spend much of its infancy in court. State Governors will likely challenge the Assembly's authority to stretch the tenure of local governments. Meanwhile, human rights activists and out-of-favor politicians also have questioned the constitutionality of its restrictive aspects. End summary.

2. (C) President Obasanjo signed the hotly debated electoral law only a few days after receiving the measure. The law had been in joint committee for several weeks as Senate and House conferees reconciled differences in their respective versions. While both versions delayed local government elections from 2002 to 2003, their most salient difference was that the Senate wanted a staggered 2003 election schedule while the House preferred that all elections take place the same day. The final product incorporated the Senate preference. Other key provisions of the new electoral measure are:

-- The sequencing of elections in three stages: National, State and Local;

-- The restriction of new political parties to participation only in local elections for the 2003 electoral cycle; and

-- Designation of the INEC as the final authority to determine the qualification of parties and candidates.

3. (C) Most electoral experts agree that changing the local elections to 2003 made sense on two counts. First, preparations to hold local elections in early 2002 were negligible. Time was swiftly running out to adequately prepare for the elections. Second, contemporaneous or simultaneous elections were more efficient technically and much more economical than the original schedule which bifurcated the local races from the other elections. However, passage of the new law was not driven by the advice of these experts. Their advice simply provided a rationale for what the National Assembly might have done anyway.

4. (C) Delaying local elections a year basically was a child of power politics disguised as a technical fix. Elected officials in Abuja, from the National Assembly to the Presidency (hereinafter referred to as "the Abuja Group"), have grown wary of the power and independence exhibited by state governors. Given the governor's control over state and local purse strings, the Abuja Group feared that local elections in 2002 would give the governors undue political advantage. They worried a governor would use his position as the state Chief Executive to funnel patronage at the local level and thus control the outcome of local contests. By controlling the local electoral apparatus, the governors would not only safeguard their incumbency, but would enhance their influence over subsequent party Presidential and National Assembly nominations as well as the 2003 general elections for these offices. In short, the Abuja group feared the governors would become independent king-makers, not beholden to the center or the President. Any national office contestant seeking votes

in a particular state would be compelled to pay homage and perhaps something more pecuniary to enlist the governor's support.

15. (C) During a December 5 conversation with PolCouns, Representative Suleiman Isiyaku (PDP-Yobe) acknowledged that the primary motivation behind the law was to undercut the governors' growing power. On issues such as resource allocation and revenue sharing between the Federal Government and the states, governors had become too demanding and vociferous, he maintained. While the governors caviled that the Federal Government was not passing sufficient revenues to them, too many governors were behaving dictatorially toward local governments. The very heavy-handedness they decried in the Federal Government, many governors were applying to local governments with even greater conviction and force. Not only were many governors tightly controlling local government expenditures to ensure their cronies handsome dollops from the bursary, numerous governors also were unilaterally firing elected local officials, contravening both state and federal constitutions, Isiyaku stated.

16. (C) According to the Representative, the governors' most unforgivable infraction was to pressure members of the National Assembly. Many Assembly members, he declared, had been threatened by governor's to hew the voting line prescribed by governors on certain issues or risk the loss of support at the local government level come legislative elections. The electoral law was passed in large measure to stem the state executive's ability to control the political and electoral apparatus at the local level, and thus wield this sword in the face of Assembly members.

17. (C) Although governors would not dare lean on the President as they had Assembly members, the Presidency was aware of these machinations, Isiyaku asserted. Aso Rock realized the governors would eventually seek leverage over the President. The Villa wanted to avoid the situation where carrying the Presidential sweepstakes in a particular state would depend on the candidate being in the governor's good graces. The Presidency wanted the opposite dynamic, where gubernatorial candidates needed the President's blessing. The first step toward this objective was pushing the local elections to 2003.

18. (C) The corollary was sequencing the 2003 elections so that the national elections (Presidential and National Assembly) preceded the state and local contests. This scenario complicates the governor's quest to wrest control of the local areas before the Presidential elections. Under the new law, local incumbents will remain insulated until their elections, which fall after to the national contests. Additionally, the new sequencing compels a degree of bottom-up party loyalty. Given the bandwagon effect in Nigeria, the party winning the Presidency will likely win most state and local races. To buoy their chances of victory, state and local aspirants now will find it in their interests to ensure the success of their party's Presidential nominee. (Comment: The amended electoral schedule represents the convergent interests of nationally elected officials in minimizing the political power of state executives, and secondarily, of state legislatures. The local government incumbents, whose tenure has been extended by a year, also aligned themselves with the national elected officials. One national representative admitted that officials of the Association of Local Governments of Nigeria (ALGON) had visited the Capitol in Abuja, doling out contributions to ensure Assembly Members passed the electoral measures. End Comment)

19. (C) The law's passage will not mute the governors and state assemblies. While the measure was still working its way through the National Assembly, Governors and State Assemblies launched an aggressive, often confrontational public relations blitz to discourage the law's passage. The Governors trashed the measure as an usurpation of power, arguing the constitution conferred the authority to extend local government tenures to state governments not to the National Assembly. State assemblies threatened constitutional standoffs by vowing to dissolve Local Government Councils and hold elections in 2002, notwithstanding the bill. (Comment: The Governor's exegesis is not unreasonable. The constitution gives State Assemblies authority over the establishment of local governments, while it provides the National Assembly general authority to establish electoral laws. The document does not explicitly grant to any arm of government the power to extend local government tenures. Both sides argue the constitution should be read in way that gives them the power. Many prominent legal minds believe the constitutional interpretation emanating from the State Assemblies -- that the

"establishment clause" gives the power to the states -- is more compelling than the arguments being mustered in Abuja. End comment.)

10. (C) After the bill was passed, Obasanjo huddled selected Governors and National Assembly leaders together in an apparent effort to forge a compromise. However, there was no visible exit from the legal and political tangle the collective public hectoring and posturing had wrought. The Governors had offered not to object to the bill and the 2003 local elections if the federal government would allow the dissolution of the Local Government Councils in 2002. The governors would then hand pick the interim local officials. At that point, the Governors' arguments for constitutional propriety rang hollow, Isikayu declared. By requesting the power to unilaterally fill elected positions, the Governors' solution would cause more wreckage than the flaw it sought to repair, he claimed. Rejecting the proposal as an unwise augmentation in gubernatorial power, the Assembly passed the bill, sending it to the President for signing on December 3. By December 6, Obasanjo signed the measure, stating that whomever felt aggrieved should take the matter to court. Governors are scheduled to meet December 19 to discuss a collective course of action.

----- New Parties Put on a Short, Local Leash -----

11. (C) In addition to shifting the local elections, the law restricts newly registered parties to participation solely in local elections. Only those new parties that win at least 15 percent of local government chairmanships in two thirds of the states in 2003 will be allowed to contest in national and state elections come 2007. The ostensible reason for this provision is to ensure stability by limiting the propagation of small, parochial groups that would only exacerbate ethnic and regional tensions.

12. (C) Critics upbraid the provision as undermining the freedom of association. Limiting the new parties to local government elections, which are now the caboose of the electoral train, discourages formation of new parties. People eyeing national or state office would be penalized by joining a new organization; now, these office-seekers must affiliate with an existing group.

13. (C) Most observers see the measure as Obasanjo's attempt to fence in PDP members and power-brokers who have become disenchanted with his Administration. Rumors abound about Northern heavyweights, including former Head of State Babangida, being seized with displeasure over Obasanjo's failure to consult them regularly and his perceived tilt toward his Southwest homeland. Some Governors and National Assembly members also dislike Obasanjo. This restrictive provision will prevent this corps of disgruntled politicians from bucking the PDP to form parties that could influence national and state election outcomes. By limiting the field to extant parties, the new legislation benefits the ruling PDP and, by extension, President Obasanjo should he seek a second term. The argument that this change was made to prevent defections from the PDP is bolstered by the fact that it came at the Presidency's behest. Apparently, the clause was inserted at the thirteenth hour, after the law had already been adopted by both houses. This inclusion would appear to be a procedural irregularity. However, since the bill suited their interests, few in the Assembly seem to mind this procedural blemish. The law may also keep centrifugal forces within the opposition APP and AD in check. Riven by internal factionalism, they stand a better chance of survival if potential defectors face political irrelevance as a price for leaving. However, opposition leaders also realize the new measure might drive defectors into the governing PDP instead of the new parties.

----- INEC's Influence Rises -----

14. (C) The electoral law significantly expands INEC authority to disqualify candidates and parties. Previously, INEC was delegated the authority to render administrative determinations about a party's or candidate's eligibility. Disputes would go to the courts. The new law ejects the courts from its normal jurisdiction to hear these disputes. INEC will be the final arbiter. Although the courts are not immune to political pressure, opponents of this provision consider INEC as more susceptible than the judiciary to

bending to the Executive's will. These opponents fear Aso Rock will influence INEC's determination, which, as the law now stands, are not subject to review.

The Disaffected and Dismayed

15. (C) While signatories to the law are congratulating themselves for protecting their incumbencies, opponents are huddling together to blunt the effect of the legislation. The opponents make an incongruous army: Officials of the Yoruba-based AD, leaders of prospective political parties, state Governors, legislators and a coterie of the nation's best know human rights attorneys and activists have been the most vocal critics. The list of activists who oppose the bill reads like a Who's Who of Human Rights in Nigeria: Constitutional Rights Project leader Clement Nwankwo, Civil Liberties Organization founder Olisa Agbakoba, Beko Ransome-Kuti, the irascible Femi Falana and the irrepressible Gani Fawehinmi. Fawehinmi's distaste for the bill was such that he resigned as an attorney for the House of Representatives. Attacking on several fronts, the human rights activists believe the law is infirm because the National Assembly overstepped constitutional bounds by extending the tenure of local governments. Second, they join in lambasting the restrictions on new parties as anti-democratic. Third, the designation of the INEC as the final arbiter of electoral qualifications is considered both an improper usurpation of the judiciary's constitutional mandate and a thinly veiled device to enable the Presidency to exert significant influence over which parties and candidates get the green light from the INEC. In short, they are convinced that the law's unconstitutional and restrictive (undemocratic) bent far outweigh the logistical and economic benefits of grouping the elections closer together.

Comment

16. (C) During the past six weeks, the electoral law has been a genuine political tug of war. As with most issues that reach this level of controversy, a politician's viewpoint is shaped more by self-interest than principle. Those who stand to gain, ignore the law's possible shortcomings; those who are undercut by the law's passage, see only warts. Yet, the controversy reveals a dynamic made possible by the new democratic dispensation in Nigeria. Usually, the political fault lines are drawn by ethnicity, region or religion -- by those immutable characteristics that define "who you are." This time, battlements are delineated more by "what office you fill." Governors, regardless of region, state size, and ethnicity hold a unified view. Likewise, National Assembly members see things similarly despite their many differences and despite acrimony over previous issues.

17. (C) In some ways, it is a positive development to see the debate fashioned by the actor's position in the political constellation and not by intrinsic factors that are more or less unchangeable. In a certain sense, the emergence of new political alliances that cut across traditional ethnic and regional lines is a sign of democratization. The downside is that this competition over the electoral law primarily represents the continuation of power politics by other means. The alliances are based almost solely on self-interested electoral considerations. Now, they have allied to protect their positions. The competition also leaves the psychological impression that the law generally pits the "ins" against the "outs," often a source of disequilibrium when a nation embraces a new political system.

18. (C) Using this legal device to gain higher ground in an essentially political battle may produce some unintended casualties. The overt infighting within the political class affirms the public's perception that Nigerian politicians cannot effectively govern their own appetites, let alone govern the nation. Some of the law's provisions also seem to challenge the sanctity of the constitution. Everyone praises the constitution; yet, in the next breath, many are ready to jettison one of the document's provisions if the excision suits their immediate interests. The manner in which the measure was passed did not advance the rule of law and may have weakened it, to a degree.

19. (C) The brouhaha will likely be cast to the judiciary, giving the Supreme Court a chance to affirm its position as final arbiter of constitutional issues. If called upon, the judiciary will need to exert its independence by impartially

deciding the Act's constitutionality. If so, the Court would have taken a key step in what promises to be the lengthy journey of defining the parameters in which the political game can be played responsibly in Nigeria. The Court's decision could seminally influence the contours of Nigerian federalism as much as John Marshall's decisions shaped American federalism during the early years of our Republic. Still, the larger question looms: does the law increase the prospects for the elections of 2003 to be superior to those of 1999? While too early to venture a guess, the measure establishes salient observations points from which we can gauge the process as events unfold. For example, the independence and impartiality of the INEC loom more importantly in view of the INEC's

increased power to determine who can enter the electoral fray. Also, in that few political parties will be allowed to contest in national elections, intra-party mechanisms to ensure participation and access will weigh heavily. Last, by signing the law, Obasanjo tacitly indicated he is considering a second term and is positioning himself accordingly. In the short term, the law strengthens Obasanjo. However the more people see Obasanjo as a candidate and because of the restrictive aspects of the law, the more important it will be for him to act in a manner showing Executive branch commitment to honest elections. If he does not act to soothe ruffled feathers and co-opt some of the law's critics, then opposition to the law might intensify and that would wound Obasanjo in the longer term.

20 (C) In the end, electoral considerations make for strange bedfellows. A year ago, the relationship between the President and the National Assembly was rancorous. Now, they have allied to help protect each other's electoral chances. This might reflect a one-time meeting of the minds or it could represent a deeper recognition between the Presidency and the Assembly of the need to cooperate, to the extent possible, during the pre-election period. How the Assembly treats the budget debates when it reconvenes early next year will be a major indication of which description is more apt. End comment.

Jeter